

EX PARTE OR LATE FILED

WILEY, REIN & FIELDING

ORIGINAL

1776 K STREET, N. W.

WASHINGTON, D. C. 20006

(202) 429-7000

August 18, 1993

DOCKET FILE COPY ORIGINAL

FACSIMILE

(202) 429-7049

TELEX 248349 WYRN UR

WRITER'S DIRECT DIAL NUMBER

(202) 429-7303

RECEIVED

AUG 18 1993

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notification of Permitted Ex Parte Presentation
MM Docket No. 92-266

Dear Mr. Caton:

Viacom International Inc. ("Viacom"), by its attorneys and pursuant to Section 1.1206(a)(2) of the Commission's rules, hereby submits an original and one copy of this memorandum regarding a permitted ex parte presentation to the Commission's staff regarding MM Docket No 92-266.

On Monday, August 16, 1993, the attached document was submitted to Alexandra M. Wilson of the Commission's staff. The document relates to the Notice of Proposed Rule Making in MM Docket No. 92-266, FCC 92-544 (rel. Dec. 24, 1992), which sought comment on the implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 which dealt with rate regulation.

Kindly direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Wayne D. Johnsen

Wayne D. Johnsen

WDJ/rr

Enclosure

cc: Alexandra M. Wilson

No. of Copies rec'd
List A B C D E

241

WILEY, REIN & FIELDING

DUPLICATE

1776 K STREET, N. W.
WASHINGTON, D. C. 20006

(202) 429-7000

August 16, 1993

PHILIP V. PERMUT
(202) 429-7250

FACSIMILE
(202) 429-7049
TELETYPE 248349 WYRN UR

Alexandra M. Wilson, Esq.
Mass Media Bureau
Federal Communications Commission
1919 M Street, NW, Room 310
Washington, DC 20554

RECEIVED
AUG 16 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 92-266

Dear Ms. Wilson:

Viacom Cable ("Viacom") is in the process of recalculating its subscriber service rates in anticipation of the September 1, 1993, effective date of the Commission's rate regulations. In this process, Viacom has discovered a number of areas about which it needs guidance. These matters, to the best of Viacom's knowledge, have not been the subject of FCC decisions or discussion in question-and-answer public notices.

One area about which Viacom seeks clarification is how certain post-September 1, 1993, events affect a cable system's calculation of its initial permitted rate. As you know, the initial permitted rate is determined, in part, on the number of regulated channels that the system provides its subscribers, as well as the number of those offerings delivered by satellite. While a cable system is obviously aware of the services it is currently providing, uncontrollable future events may result in changes in the initial permitted rate that it can charge. For example, stations may make an initial request for carriage under the "must-carry" rules or first deliver a "good quality signal" to a cable system's principal headend after September 1, 1993. Depending upon a number of system characteristics, including channel capacity, any such request could require a system simply to add a new channel or extensively realign its tiers, including possibly terminating program services. In most cases, these changes will affect the calculation of the initial permitted rate.

Similarly, uncertainty is created by the fact that various rulings and clarifications of important aspects of the Commission's regulatory program will not be made until

Alexandra M. Wilson, Esq.
August 16, 1993
Page 2

after cable systems have made "final" arrangements for the effects of regulation. It is possible, therefore, that what is proper today will be rendered not so at a later date. This could result in an initial permitted rate either higher than allowed or lower than it otherwise would be.

Viacom believes that an equitable solution to the above situations is to allow cable operators the flexibility to recalculate their rates whenever, during the initial year of regulation, events beyond their control affect the calculation of their initial permitted rate. For example, if a cable system's rates were proper but then rendered too high by an uncontrollable event, Viacom suggests the system should be obligated to lower its rates to the proper level -- without penalty or refund liability. On the other hand, if the rates are lower than otherwise would be necessary, the cable operator should be permitted only to raise its rates prospectively to the new level.

Viacom believes a similar policy should apply where, after a good faith attempt to calculate an initial permitted rate, it is discovered that a system has made an error in mathematics or interpretation. After the first year, when the FCC and the industry have gained some experience with the new regulatory program, cable operators can properly be held responsible for their errors.

For a short period, Viacom believes it is good public policy to require consumers and cable operators to share the risk of errors at the start of a complex regulatory program such as this. Without this flexibility, cable operators have an incentive to be too cautious in establishing their initial rates. Without clear information and recognizing the possibilities of changes, a cable operator will need to balance the problems associated with having set rates too low -- with no possibility of raising them to the proper level -- or setting them too high -- with a risk of a refund. In essence, cable operators will be put in the position of having to predict future events in order to arrive at rates fair to everyone. This serves no one's best interest.

Viacom respectfully urges the Commission to clarify how it intends to treat the examples noted. Viacom believes that its suggested approach is consistent with the

Alexandra M. Wilson, Esq.
August 16, 1993
Page 3

objectives of the Cable Consumer Protection and Competition
Act of 1992 and the public interest.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Philip V. Permut", is written over the typed name.

Philip V. Permut
Counsel for Viacom Cable

PVP/rr